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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

CRIMINAL APPEAL NO. 1068 /2002

APPELLANT
(IN JAIL)

: Satish Kumar Sahu S/o Late Gendram Sahu
Aged about 22 years,
Resident of Village Tanod,
Police Station Shivrinarayan,
District Janjgir-Champa
Chhattisgarh

VERSUS

RESPONDENT : State of Chhattisgarh
Through Station House Officer,
Police Station Shivrinarayan,
District Janjgir-Champa,
Chhattisgarh

APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1068/2002

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Satish Kumar Sahu

Vs.

State of Chhattisgarh

Post for orders

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

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A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1068/2002

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Satish Kumar Sahu

Vs.

State of Chhattisgarh

PRESENT: -

Shri G.S.Ahluwalia, for the accused-appellant.

Shri J. D. Bajpai, G.A./Addl. Public Prosecutor for the State.

J U D G M E N T

(Delivered on 16 -01-2006)

This appeal is directed against the judgment dated 18.09.2002 delivered by Shri N.D. Ekka, 4th Additional Sessions Judge (Fast Track Court), Janjgir in Special Case No. 508/2001 whereby the appellant was convicted under Section 376(1) and Section 506 part II of the I.P.C. and was sentenced to undergo rigorous imprisonment for seven years and fine of Rs.500/-, in default of payment of fine, to under further R.I. for three months under Section 376 (1) and to under R.I. for two years under Section 506 part II of the I.P.C.

2. Briefly stated the prosecution story is that Prosecutrix P.W.15, aged about 13 years, is the daughter of Ambika P.W.2 and Ramkishun P.W.5. On 26.10.2001, she along with Ku. Pushpa P.W.18 and Ku. Meena D.W.1 had gone to witness Dussehara festival in which the effigy of Ravana was burnt in the outskirts of the village Tanaud. At about 7.00 P.M. after the festival was over the prosecutrix P.W.15 was returning home alone. Near the village tank while she was attending a call of nature, the accused-appellant came there and caught hold of her, kissed her, forcibly

lifted her and took her towards the bushes near the tank, forcibly undressed her and committed rape on her. The prosecutrix said that she would tell her mother about the incident. The appellant threatened to kill her. Due to forceful penetration the virgin prosecutrix started bleeding profusely from the private parts. The appellant offered his *banian* to wipe out the blood but she did not accept it and went to the tank and washed herself. On returning home, the prosecutrix informed her mother Ambika P.W.2 about the rape committed by the appellant on her.

3. F.I.R. Ex.P.2 was lodged by Ambika in Police Station Shivrinarayan on 27.10.2001 at 09.15 A.M. Prosecutrix was sent for medical examination. Dr. Rama Ghosh P.W.7 examined the prosecutrix at 6.30 P.M. on 27.10.2001 and found that she had discomfort in walking and could walk slowly. Her secondary sexual characters were well developed. There were multiple bruises reddish blue in colour on her breasts and she was complaining of pain all over both breasts. There was a cut present at the joint of both Labia Majora and Labia Minora which was skin deep red in colour, margins were lacerated 1 cm. long and it bled slightly on touch. Her vagina was very tight, though admitted two fingers and on stretch was bleeding. Blood clots were also present. There was a lacerated wound present over right lateral vaginal wall. Margins were not clear. It bled on touch. The depth of lacerated wound was about ¼ cm. Hymen was ruptured. Curunculea was present, red in colour. In the opinion of Dr. Ghosh P.W.7, the injuries were about 24 to 30 hours old. She opined that forceful sexual intercourse might have been committed on the prosecutrix P.W.15. She referred her for determination of age to the District Hospital, Bilaspur.

4. Dr. R. Jitpure P.W.6 who conducted the ossification test on the prosecutrix for determination of her age found as follows:

i) Head of radius was fused (age of fusion is 14 years)

ii) Olecranon process was fused (age of fusion is 15 years).

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iii) Lower end of radius ulna not fused (age of fusion is 17 to 18 years.

iv) Iliac Creast had appeared though not fused (age of appearance 14 years, age of fusion 19 – 20 years

On the basis of above findings, Dr. Jitpure P.W.6 opined that age of Prosecutrix could be between 15 to 17 years on the date of occurrence.

5. Birth certificate of Prosecutrix Ex.P.5 given by Headmaster Umedram Sahu of Primary School Tanaud showing the date of birth of Prosecutrix as 2.1.1987 was seized vide Ex.P.4. The appellant was also sent for medical examination on 28.10.2001. His penis, genital organs and secondary sex characters were found to be well developed and no clinical sign of incapacity to perform sexual intercourse was found on him by Dr. K.K.Thawait P.W.19. Underwear worn by the accused-appellant was sent in a sealed packet by Dr. Thawait which was seized vide Ex.P.13. One pink coloured two piece, one red coloured panty of Prosecutrix having bloodlike stains which was sent by Dr. Rama Ghosh P.W.7 in a sealed cover was seized vide Ex.P.1. On being sent for chemical examination to the Forensic Laboratory, it was opined by the F.S.L. Raipur that the two piece i.e. skirt and *shameez* and her underwear and the underwear of the accused-appellant were stained with blood. Spot map Ex.P.11 was prepared by Paramlal (P.W.8). After completion of investigation, the accused-appellant was prosecuted under Section 376(1) and 506 Part-II I.P.C.

6. The accused abjured the guilt. In defence, it was pleaded that the accused and prosecutrix were in love although sexual relationship had never been established. On the date of occurrence, the accused had gone to the Dusssehra festival. The prosecutrix had called the accused to the place of occurrence but the accused did not go since he was incapable of performing sexual intercourse and could not get any erection. The prosecution examined as

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many as 21 witnesses. In defence, the accused-appellant examined Ku. Meena, aged about 17 years who had accompanied the prosecutrix to the Dussehara festival. Meena D.W.1 deposed that at the festival the prosecutrix had told her that she had called Satish and some other boys, and therefore, she was going to meet them and had left the festival at about 5.30 – 6.00 P.M.

7. Shri G.S.Ahluwalia, learned counsel for the appellant has at the very outset stated that he does not assail the finding of the trial Court that on 26.10.2001 at about 7.00 P.M. the accused-appellant had committed sexual intercourse with the prosecutrix P.W.15. Learned counsel for the appellant argued that he assailed the conviction of the appellant only on the following grounds:

A. That the oral evidence relating to the age of the prosecutrix did not conclusively show her age to be less than 16 years whereas the evidence of Dr. Jitpure P.W.6 and his report Ex.P.8 clearly proved that age of the prosecutrix was about 15-17 years. Considering the legally permissible margin of error of two years on either side, it could not be ruled out that age of the prosecutrix on the date of occurrence was more than 16 years.

B. Secondly, the evidence led by the prosecution showing:

(a) absence of injuries on the back of the prosecutrix, (b) admission by the prosecutrix about offering no resistance during the sexual act, (c) the washing of the blood stains by her in the Tank after refusing to accept the *banian* of the accused-appellant to wipe out the blood, (d) the admission relating to *Panchayat* for her marriage with accused-appellant and (e) the testimony of Meena D.W.1, though cited by the prosecution but given up, showing that the prosecutrix had gone to meet the accused-appellant under a pre-arranged plan was clearly suggestive of consent of the prosecutrix in the sexual act committed by the appellant.

He also laid stress on the opinion of Dr. Rama Ghosh P.W.7 in para 3 of the cross-examination that if during sexual intercourse committed with a virgin girl with her consent, a forceful penetration took place, the injuries found on the private parts of

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the prosecutrix could have been sustained. On the other hand, Shri J.D.Bajpai, learned Additional Public Prosecutor argued in support of the judgment of the trial Court. He placed reliance on a decision of the Apex Court in ***State of Punjab vs. Ramdev Singh*** reported in **2004 (2) C.G.L.J. 66** and argued that the testimony of the prosecutrix was fully corroborated by medical evidence of Dr. Rama Ghosh P.W.7 which showed that the prosecutrix was subjected to a very brutal rape. Therefore, though there might be some discrepancies in the testimony of the prosecutrix, this Court should not give weight to irrelevant or insignificant technicalities.

8. Having considered the rival contentions, I have gone through the record of sessions trial No.508/2001. The prosecutrix in para 15 expressed complete ignorance about her age. Meena D.W.1, aged about 17 years, has deposed that the prosecutrix was about 1 ½ - 2 years elder to her and had after failing once in class-I left school after studying till class-V. Her above testimony is wholly unrebutted in cross-examination. Umed Ram P.W.3 has proved the birth certificate of the Prosecutrix showing her date of birth to be 2.1.1987. The certificate shows that the date of birth entered in the school leaving register of class-V was reckoned to be the date of birth of Prosecutrix. Ramkishun P.W.5 has in paragraph 8 of cross-examination stated that when he went to admit the prosecutrix in class-1 at the school, he did not know her date of birth, and therefore, by guess work he had asked the Headmaster to write the age of Prosecutrix as 6 years. Although he has stated that on the date of birth of Prosecutrix he had made an entry in the Kotwari book, yet no such document was produced by the prosecution. In the F.I.R. lodged by Ambika P.W.2, the age of Prosecutrix was shown to be 13 years on the date of occurrence. In para 6 of her cross-examination, she also admits that the age narrated by her was on the basis of guess work and she had not taken any documentary proof thereof to the Police Station. The primary evidence of proof of age in such matter is the date of birth entered in the Kotwari book at the time of birth which has not been

produced in this case. The form filled in by the parents at the time of admitting the child in the school in class-1 is also a primary evidence for proving the age, but the testimony of Ramkishun P.W.5 in paragraph 8, clearly shows that he did not know the date of birth of the prosecutrix, and therefore by imagination he had asked the Headmaster to write her age as about 6 years. It is thus clear that if the same age has been mentioned in the school leaving register of class-V, it could not be taken to be the conclusive proof of age of the prosecutrix.

9. The other evidence for proof of age, on record, is the testimony of Dr. R. Jitpure P.W.6 and the ossification test report mentioned in paragraph 2 which clearly shows that her age was assessed to be between 15-17 years since Iliac crest had appeared (age of appearance – 14 years) but not fused (age of fusion – 19-20 years) and the Olecranon process had fused (age of fusion 15 years) and the lower end of radius ulna was not fused (age of fusion 18-20 years. Considering the above fact and the legally permissible margin of error of two years on either side it could not be ruled out that the age of the prosecutrix was more than 16 years on the date of occurrence.

10. The testimony of the prosecutrix clearly shows that on reaching the *Khamba* tank while she sat for attending a call of nature, the accused-appellant caught hold of her, lifted her and took her to a distance and thereafter committed rape on her. The medical evidence of Dr. Rama Ghosh P.W.7 has been referred in paragraph 3 of the judgment which clearly shows that sexual intercourse was brutal and very painful. Dr. Rama Ghosh found multiple bruises reddish in blue colour on the breasts of prosecutrix who was complaining of pain all over both breasts. The prosecutrix was not able to walk comfortably and could walk with difficulty. There was a cut present at the joint of both Labia Majora and Labia Minora which was skin deep red in colour, margins were lacerated 1 cm. long and it bled slightly on touch.

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Her vagina was very tight, though admitted two fingers and on stretch was bleeding. Blood clots were also present. There was a lacerated wound present over right lateral vaginal wall. Margins were not clear. It bled on touch. The depth of lacerated wound was about ¼ cm. Hymen was ruptured. Curunculea was present, red in colour. The unrebutted testimony of the prosecutrix is also fully corroborated by the testimony of her parents Ambika P.W.2 and Ramkishun P.W.5. Ambika P.W.2 has deposed that on the date of occurrence on returning from the fair, the prosecutrix was crying and narrated the incident to her. The testimony of the prosecutrix thus leaves no manner of doubt that the accused-appellant had a very forceful sexual intercourse with her on 26.10.2001 at about 7.00 P.M. near the *Khamba* tank.

11. The only point which requires consideration now is whether the prosecutrix had consented to the sexual intercourse by the appellant. It is true that Meena D.W.1 stated that at the fair the prosecutrix had told her that she was going to meet Satish and some other boys which cannot be doubted but that does not by itself mean that the prosecutrix was going to enjoy sexual intercourse with the accused-appellant. The offence of rape would be complete even if after the prosecutrix went to meet the accused-appellant of her own volition, she was subject to sexual intercourse without her consent by the appellant. The injuries sustained by the prosecutrix leave no manner of doubt that she did not consent to the sexual intercourse. Her testimony in paragraph 8 that the accused lifted her and took her to some distance is also corroborated by the F.I.R. Ex.P.2.

12. The prosecutrix was a virgin girl and had never enjoyed sex before. This is also clear from the statement made by the accused in his examination under Section 313 Cr.P.C. that before the date of occurrence he never had sex with the prosecutrix. It is quite plausible that since the prosecutrix knew the accused and had gone to meet him, she did not shout when the accused lifted her as

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she would not know what the accused had in mind. However, she stated in cross-examination that she had shouted when the accused undressed her but she was overpowered by the accused. The manner in which the prosecutrix was undressed and subjected to sexual intercourse leaves no manner of doubt that there was complete lack of consent of the prosecutrix.

13. Another fact which completely rules out consent of the prosecutrix in the sexual act committed with her by the accused-appellant is that if she had consented and was a willing party to the sexual act, then she would not have narrated the incident to her mother under any circumstances. It is a not a case where the accused-appellant and the prosecutrix were seen together while enjoying sex which would have compelled the prosecutrix to inform her parents to hide her shame. In this case, the very fact that the prosecutrix immediately after returning home cried to her mother and narrated the entire story about the brutal rape committed on her lends credence to the fact that there was complete lack of her consent in the sexual act by the accused-appellant. Another fact which supports the above view is that immediately after the rape, the prosecutrix who was profusely bleeding told the accused-appellant that she would narrate the incident to her mother whereupon the accused-appellant threatened to kill her. The refusal by the prosecutrix to accept the *banian* offered by the accused-appellant for wiping out the blood also clearly shows that she was not consenting party in the sexual act.

14. The opinion given by Dr. Rama Ghosh P.W.7 in cross-examination paragraph 3 does not apply to the present case since in this case there were multiple bruises reddish in colour present on both breasts of the prosecutrix and prosecutrix had pain all over both breasts. The prosecutrix was subjected to rape so brutally that she could not even walk normally. The injuries found by Dr. Rama Ghosh on private parts of the prosecutrix coupled with the above mentioned facts clearly rules out consent of the

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prosecutrix in the sexual intercourse committed by the appellant on her.

15. So far as the admission made by the prosecutrix that there was a *Panchayat* in which a marriage proposal was considered does not help the accused in any manner. In a tradition bound and conservative society more particularly in a rural area the shame of sexual assault on a girl in her teens cannot be lost sight of . The hapless parents would have no other alternative but to request the accused appellant to marry the prosecutrix and in that context the *Panchayat* must have been held. This does not absolve the accused from the heinous crime committed by him.

16. As regards the admission by the prosecutrix that while she was being lifted and taken to a lonely place by the accused-appellant, she did not scratch the accused-appellant with her nails or bit him, is again of no help to the accused-appellant. The prosecutrix was a virgin. While returning from the fair perhaps she had gone to meet the appellant. Therefore, when the accused lifted her and took her to a lonely place, perhaps she did not imagine that she was about to be subjected to a brutal rape. In paragraph 13, she has narrated that while she was being undressed she had shouted but the accused had over-powered her and forcibly made her to lie on the ground. The fact that the accused had kept his foot on her chest is also corroborated by the bruises found on her breasts. Since the place of occurrence was a very lonely place, the shouts of the prosecutrix would be of no consequence, therefore, the mere fact that the prosecutrix did not offer any resistance during the sexual act, does not help the accused-appellant in any manner.

17 The prosecutrix was a virgin and in her teens. The perpetrator of crime was an able-bodied youth bustling with energy and determined to fulfill his lust and take advantage of the prosecutrix having gone to meet him and forcefully removed the prosecutrix to a secluded place where there was none around to help the prosecutrix in her defence. As held by the Apex Court in

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State of Punjab v. Ramdev Singh reported in **2004 (2) C.G.L.J. 66**, the absence of visible marks of injury on the back of the prosecutrix on the date of her medical evidence would not necessarily mean that she had offered no resistance at the time of commission of crime. The very fact that the prosecutrix had injuries on her breasts as well as on her private parts and was profusely bleeding coupled with the fact that she immediately informed the incident to her mother lends credence to her testimony and completely rules out her consent in the sexual act.

18. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the trial Court has rightly convicted the appellant under Section 376 (1) and 506 Part-II of the I.P.C. So far as the sentence awarded to the appellant is concerned, it is befitting to the heinous crime committed by the appellant and does not call for any interference. The appeal is devoid of substance, has no merit and is dismissed.

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

[redacted]Anjani